

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For decisions released the week of September 22-26, 2008

Arbitrator entitled to hold that insured is entitled to greater benefits than claimed

***Brodhecker v. Coseco Insurance Co.*, FSCO P07-00013, September 15, 2008 – Director's Delegate Evans**

MVC May 20, 2003. Insured was the mother of three children, including an autistic child, and received caregiver benefits in the amount of \$100 per week from December 1, 2003 to May 19, 2005 when benefits were terminated. In her application for arbitration the insured initially claimed \$100, then later increased her claim to \$240 during school weeks and \$300 during break periods. During closing arguments the arbitrator asked whether she had discretion to award more than the amount claimed, and the insured subsequently filed a motion to increase the claim to the statutory maximum. The arbitrator awarded \$350 per week, an amount greater than was claimed by the insured, stating that the invoices submitted by the insured were not determinative of the reasonable necessity of the caregiving expenses that had been incurred and that it was for an arbitrator to decide the amount following consideration of the evidence.

Director's Delegate upheld the arbitrator's decision. The evidence (especially reports from occupational therapists) showed that more services were being provided than were being claimed and that the benefit was being undervalued as a result of the insurer's actions.

Implications:

Although Director's Delegate Evans states that the decision is fact-specific, it sets a precedent for cases where the insured's claim has been undervalued. There may be room to argue for an increased amount, provided there is support from rehabilitation providers, health practitioners and so forth.

Accessing Arbitration Decisions

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